6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2012-0323; FRL-9945-63-Region 4]

Air Plan Approval and Air Quality Designation; TN; Redesignation of the Sullivan County Lead Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 15, 2015, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Bristol, Tennessee 2008 lead nonattainment area (hereafter referred to as the "Bristol Area" or the "Area") to attainment for the 2008 lead National Ambient Air Quality Standards (NAAQS) and an associated State Implementation Plan (SIP) revision containing a maintenance plan and a reasonably available control measures (RACM) determination for the Area. EPA is proposing to determine that the Bristol Area is continuing to attain the 2008 lead NAAQS; to approve the SIP revision containing the State's maintenance plan for maintaining attainment of the 2008 lead standard and the State's RACM determination; and to redesignate the Bristol Area to attainment for the 2008 lead NAAQS.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0323 at http://www.regulations.gov. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman may be reached by phone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What are the Actions EPA is Proposing to Take?

EPA is proposing to take the following four separate but related actions: (1) to approve Tennessee's RACM determination for the Bristol Area pursuant to Clean Air Act (CAA) section 172(c)(1) into the SIP; (2) to determine that the Area is continuing to attain the 2008 lead NAAQS; (3) to approve Tennessee's maintenance plan for maintaining the 2008 lead NAAQS in the Area into the SIP; and (4) to redesignate the Area. The Bristol Area is comprised of the

portion of Sullivan County, Tennessee, bounded by a 1.25 kilometer radius surrounding the Universal Transverse Mercator (UTM) coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the lead acid-battery manufacturing and lead oxide production facility owned by Exide Technologies (Exide Facility).

EPA's 2008 lead nonattainment designation for the Area triggered an obligation for Tennessee to develop a nonattainment SIP revision addressing certain CAA requirements under title I, part D, subpart 1 (hereinafter "Subpart 1") and to submit that SIP revision in accordance with the deadlines in title I, part D, subpart 5. Subpart 1 contains the general requirements for nonattainment areas for criteria pollutants, including requirements to develop a SIP that provides for the implementation of RACM, requires reasonable further progress (RFP), includes base-year and attainment-year emissions inventories, and provides for the implementation of contingency measures. On August 29, 2012, EPA published a final determination that the Area had attained the 2008 lead NAAQS by the attainment date based on quality-assured and certified ambient air monitoring data for the 2007-2009 time period. *See* 77 FR 52232. In that determination and in accordance with EPA's clean data policy, EPA suspended the requirements for the Area to submit a SIP revision addressing RACM, RFP plans, contingency measures, and certain other Subpart 1 requirements so long as the Area continues to attain the 2008 lead NAAQS.[1]

[1] Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the general preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, "RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" (May 10, 1995). Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment and that interpretation has been upheld by federal courts. For more information on the Clean Data Policy and its application to the 2008 lead NAAQS, see EPA's August 29, 2012, final action. *See* 77 FR 52232.

Although these requirements are suspended, EPA is proposing to determine that the State's Subpart 1 RACM determination meets the requirements of section 172(c)(1) of the CAA and is proposing to approve this RACM determination into the SIP for the reasons discussed in Section V.A, below.

EPA is also making the preliminarily determination that the Bristol Area is continuing to attain the 2008 lead NAAQS based on recent air quality data, and proposing to approve Tennessee's maintenance plan for the Bristol Area as meeting the requirements of section 175A (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Bristol Area in attainment of the 2008 lead NAAQS through 2025. As explained in Section V.B, below, EPA is also proposing to determine that attainment can be maintained through 2026.

EPA is also proposing to determine that the Bristol Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, in this action, EPA is proposing to approve a request to change the legal designation of the Bristol Area from nonattainment to attainment for the 2008 lead NAAQS.

In summary, today's notice of proposed rulemaking is in response to Tennessee's July 15, 2015, redesignation request and associated SIP submission that address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Bristol Area to attainment for the 2008 lead NAAQS.[2]

II. What is the Background for EPA's Proposed Actions?

[2] The date of the transmittal letter for Tennessee's submittal is July 10, 2015.

On November 12, 2008, EPA promulgated a revised primary and secondary lead NAAQS of 0.15 micrograms per cubic meter (µg/m^3). *See* 73 FR 66964. Under EPA's regulations at 40 CFR part 50, the 2008 lead NAAQS are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with appendix R of 40 CFR part 50, is less than or equal to 0.15 µg/m^3. *See* 40 CFR 50.16. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement.

EPA designated the Bristol Area as a nonattainment area for the 2008 lead NAAQS on November 22, 2010 (effective December 31, 2010), using 2007-2009 ambient air quality data. *See* 75 FR 71033. This established an attainment date five years after the December 31, 2010, effective date for the 2008 lead nonattainment designations pursuant to CAA section 172(a)(2)(A). Therefore, the Bristol Area's attainment date is December 31, 2015.

As discussed above, EPA determined that Tennessee had attained the 2008 lead NAAQS prior to the attainment date and issued a Clean Data Determination on August 29, 2012. *See* 77 FR 52232. Although a Clean Data Determination waives the requirements for an attainment demonstration, a state must submit, and EPA must approve, a redesignation request and a maintenance plan SIP revision before an area can be redesignated to attainment.

III. What are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and

enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and
3. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

IV. Why is EPA Proposing These Actions?

On July 15, 2015, Tennessee requested that EPA redesignate the Bristol Area to attainment for the 2008 lead NAAQS and submitted an associated SIP revision containing a maintenance plan and a Subpart 1 RACM determination. EPA's evaluation indicates that the

RACM determination meets the requirements of CAA section 172(c)(1), the Bristol Area continues to attain the 2008 lead NAAQS, and the Bristol Area meets the requirements for redesignation as set forth in section 107(d)(3)(E)(i), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the four related actions summarized in section I of this notice.

V. What is EPA's Analysis of the State's Redesignation Request and SIP Revision?

As stated above, in accordance with the CAA, EPA proposes in this action to: (1) approve Tennessee's Subpart 1 RACM determination for the Bristol Area into the Tennessee SIP; (2) determine that the Area is continuing to attain the 2008 lead NAAQS; (3) approve the 2008 lead NAAQS maintenance plan for the Area into the SIP; and (4) redesignate the Area to attainment for the 2008 lead NAAQS.

A. RACM Determination

1. Relationship Between Subpart 1 RACM and the Redesignation Criteria

EPA does not believe that Subpart 1 nonattainment planning requirements, including RACM, are "applicable" for purposes of CAA section 107(d)(3)(E)(ii) once an area is attaining the NAAQS and, therefore, does not believe that these planning requirements must be approved into the SIP before EPA can redesignate an area to attainment. *See* 80 FR 16331 (March 27, 2015). However, on March 18, 2015, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) issued an opinion in *Sierra Club v. EPA*, 781 F.3d 299 (6th Cir. 2015), that is inconsistent with this longstanding interpretation regarding section 107(d)(3)(E)(ii). In its decision, the Court vacated EPA's redesignation of the Indiana and Ohio portions of the Cincinnati-Hamilton nonattainment area to attainment for the 1997 $PM_{2.5}$ NAAQS because EPA

had not yet approved Subpart 1 RACM for the Cincinnati Area into the Indiana and Ohio SIPs.[3] The Court concluded that "a State seeking redesignation 'shall provide for the implementation' of RACM/RACT, even if those measures are not strictly necessary to demonstrate attainment with the $PM_{2.5}$ NAAQS. . . . If a State has not done so, EPA cannot 'fully approve[]' the area's SIP, and redesignation to attainment status is improper." *Sierra Club*, 781 F.3d at 313.

EPA is bound by the Sixth Circuit's decision in *Sierra Club v. EPA* within the Court's jurisdiction.[4] Although EPA continues to believe that Subpart 1 RACM is not an applicable requirement under section 107(d)(3)(E) for an area that has already attained the 2008 lead NAAQS, EPA is proposing to approve Tennessee's RACM determination into the SIP pursuant to the Court's decision.[5,6]

2. Subpart 1 RACM Requirements

Subpart 1 requires that each attainment plan "provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the

[3] The Court issued an amended decision on July 14, 2015, revising some of the legal aspects of the Court's analysis of the relevant statutory provisions (section 107(d)(3)(E)(ii) and section 172(c)(1)) but maintaining its prior holding that section 172(c)(1) "unambiguously requires implementation of RACM/RACT prior to redesignation . . . even if those measures are not strictly necessary to demonstrate attainment with the $PM_{2.5}$ NAAQS." *See Sierra Club v. EPA*, 793 F.3d 656, 670 (6th Cir. 2015).

[4] The states of Kentucky, Michigan, Ohio, and Tennessee are located within the Sixth Circuit's jurisdiction.

[5] Pursuant to 40 CFR 56.5(b), the EPA Region 4 Regional Administrator signed a memorandum on July 20, 2015, seeking concurrence from the Director of EPA's Air Quality Policy Division (AQPD) in the Office of Air Quality Planning and Standards to act inconsistent with EPA's interpretation of CAA sections 107(d)(3)(E) and 172(c)(1) when taking action on pending and future redesignation requests in Kentucky and Tennessee because the Region is bound by the Sixth Circuit's decision in *Sierra Club v. EPA*. The AQPD Director issued her concurrence on July 22, 2015. The July 20, 2015, memorandum with AQPD concurrence is located in the docket for today's proposed actions.

[6] On September 3, 2015, the Sixth Circuit denied the petitions for rehearing en banc of this portion of its opinion that were filed by EPA, the state of Ohio, and industry groups from Ohio. *Sierra Club v. EPA*, Nos. 12-3169, 12-3182, 12-3420, Doc. 136-1 (6th Cir. Sept. 3, 2015). On March 28, 2016, the United States Supreme Court denied Ohio's petition for a writ of certiorari seeking review of *Sierra Club v. EPA*.

national primary ambient air quality standards." *See* CAA section 172(c)(1). EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could advance attainment.[7] Thus, where an area is already attaining the standard, no additional RACM measures are required. EPA's interpretation that Subpart 1 requires only the implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit[8] and by the United States Court of Appeals for the D.C. Circuit.[9]

3. Proposed Action on RACM Based on Attainment of the NAAQS

In its July 15, 2015, SIP revision, the State determined that no additional control measures are necessary in the Area to satisfy the section 172(c)(1) RACM requirement. EPA is proposing to approve this determination on the basis that the Area has attained the 2008 lead NAAQS and, therefore, no emission reduction measures are necessary to satisfy Subpart 1 RACM. As noted above, EPA has determined that the Area has attaining data for the 2008 lead NAAQS and met the standard by the December 31, 2015, attainment date. *See* 77 FR 52232. Because the Area has attained the standard, there are no emissions controls that could advance the attainment date; thus, no emissions controls are necessary to satisfy Subpart 1 RACM.

4. Proposed Action on RACM Based on the State's Analysis

Additionally, Tennessee's Subpart 1 RACM determination is approvable on the basis that the SIP revision demonstrates that no additional reasonably available controls would have

[7] This interpretation was adopted in the General Preamble, see 57 FR 13498 (April 16, 1992), and has been upheld as applied to the Clean Data Policy, as well as to nonattainment SIP submissions. *See NRDC* v. *EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club* v. *EPA*, 294 F.3d 155 (D.C. Cir. 2002).
[8] *Sierra Club* v. *EPA*, 314 F.3d 735, 743–745 (5th Cir. 2002).
[9] *Sierra Club* v. *EPA*, 294 F.3d 155, 162–163 (D.C. Cir. 2002); *NRDC v. EPA*, 571 F.3d 1245, 1252 (D.C. Cir. 2009).

advanced the attainment date. In Tennessee's RACM analysis, the State notes that the only source of lead emissions in the Area - the Exide Facility - permanently shut down in 2014. In a letter to TDEC dated October 30, 2014, Exide Technologies surrendered its major source air operating permit and stated that the lead oxide and lead acid-battery production process equipment, constituting the potential sources of air emissions covered by the air permit, had been decommissioned and largely removed from the site. The State also notes that, by July 16, 2008, the Exide Facility was operating fabric filters and wet scrubbers to comply with EPA's maximum achievable control technology (MACT) standards in 40 CFR Part 63, Subpart PPPPPP for lead-acid battery manufacturing facilities and that these MACT standards satisfied RACM requirements for controlling lead emissions. EPA has reviewed the RACM portion of Tennessee's July 15, 2015, SIP revision and agrees with the State's determination that it was not necessary to adopt or implement additional lead control measures in the Area.

B. Redesignation Request and Maintenance Demonstration

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criteria (1) - *The Bristol Area has attained the 2008 lead NAAQS.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. *See* CAA section 107(d)(3)(E)(i). For lead, an area may be considered to be attaining the 2008 lead NAAQS if it meets the 2008 lead NAAQS, as determined in accordance with 40 CFR 50.16 and Appendix R of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS, the maximum arithmetic 3-month mean concentration for a 3-year period

lead concentrations measured at each monitor within an area over each year must not exceed 0.15 μg/m^3. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix R, the NAAQS are attained if the design value is 0.15 μg/m^3 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On August 29, 2012, EPA determined that the Bristol Area was attaining the 2008 lead NAAQS based on certified 2009-2011 data. *See* 77 FR 52232. In this proposed action, EPA is preliminarily determining that the Bristol Area has continued to attain the 2008 lead NAAQS since 2011. EPA has reviewed quality-assured lead monitoring data, recorded in AQS, for 2012-2014 from the state-run monitoring station in the Bristol Area as well as preliminary data from this station for 2015.[10] The 3-year design values for 2008-2014 from this monitoring station are summarized in Table 1, below.

Table 1. 2008 - 2014 Design Value Concentrations for the Bristol Area (μg/m^3)

Monitoring Station	2008-2010	2009-2011	2010-2012	2011-2013	2012-2014
47-163-3004	0.05	0.08	0.08	0.08	0.07

The 3-year design value for 2012-2014 for the Bristol Area is 0.07 μg/m^3 which meets the NAAQS. Although 2012-2014 data are the most recent quality-assured and certified data, preliminary 2015 data indicate that the Area continues to attain the standard. In today's

[10] Data from the state-run monitor can be used for comparison with the NAAQS because it is operated in accordance with 40 CFR part 58. In addition to the State-run monitor, Exide Technologies operates three monitors in the Area. Although data from Exide's monitors cannot be used for comparison with the NAAQS because compliance with the quality assurance provisions in 40 CFR Part 58 has not been verified, Tennessee provided the measurements from these monitors as additional support information in the July 15, 2015, SIP submission.

proposed action, EPA is proposing to determine that the Bristol Area is continuing to attain the 2008 lead NAAQS. If the Area does not continue to attain the standard before EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, Tennessee has committed to continue monitoring ambient air lead concentrations in this Area in accordance with 40 CFR part 58.

Criteria (2) – *Tennessee has a fully approved SIP under section 110(k) for the Bristol Area*; and Criteria (5) – *Tennessee has met all applicable requirements under section 110 and part D of title I of the CAA.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Tennessee has met all applicable SIP requirements for the Bristol Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that Tennessee has met all applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v) and that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) contingent upon approval of Tennessee's Subpart 1 RACM determination for the Area. In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. *The Bristol Area has met all applicable requirements under section 110 and part D of the CAA.*

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's

interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001). Nonetheless, EPA has approved Tennessee's SIP revision related to the section 110 requirements for the 2008 lead NAAQS. *See* 78 FR 36440 (June 18, 2013); and 78 FR 67307 (November 12, 2013).

Title I, Part D, applicable SIP requirements. Subpart 1 of part D, found in sections 172-176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 2008 lead NAAQS were designated under subpart 1 of the CAA in accordance with the deadlines in subpart 5. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all

nonattainment areas are contained in sections 172(c)(1)-(9) and in section 176. A thorough discussion of the requirements contained in sections 172 and 176 can be found in the General Preamble for Implementation of title I. *See* 57 FR 13498 (April 16, 1992).

Subpart 1 Section 172 Requirements. Section 172 requires states with nonattainment areas to submit attainment plans providing for timely attainment and meeting a variety of other requirements. However, EPA's final determination that the Area is attaining the lead standard suspended Tennessee's obligation to submit most of the attainment planning requirements that would otherwise apply.

EPA's longstanding interpretation of the nonattainment planning requirements of section 172 is that once an area is attaining the NAAQS, those requirements are not "applicable" for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of Title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. *See* 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for reasonable further progress (RFP) and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements "have no meaning" for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni Memorandum. EPA's understanding of section 172 also forms the basis of its Clean Data Policy, which suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9). However, as discussed above, EPA is proposing

to approve Tennessee's RACM determination into the SIP in response to the Sixth Circuit's decision that section 172(c)(1) RACM is an applicable requirement under 107(d)(3)(E)(ii) and must be approved into the SIP before EPA can redesignate an area that is subject to section 172(c)(1) requirements.

Because attainment has been reached in the Area, no additional measures are needed to provide for attainment. Therefore, the section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress toward attainment is not relevant for purposes of redesignation because EPA has determined that the Area has monitored attainment of the NAAQS. In addition, because the Area has attained the standard and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(3) requires submission for approval a comprehensive, accurate, and current inventory of actual emissions. On January 9, 2014, EPA approved Tennessee's 2010 base-year emissions inventory for the Area. *See* 79 FR 1593.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Tennessee currently has a fully-approved part D NSR program in place. However, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR

program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Tennessee has demonstrated that the Area will be able to maintain the NAAQS without part D NSR in effect, and therefore Tennessee need not have fully approved part D NSR programs prior to approval of the redesignation request. Tennessee's PSD program will become effective in the Area upon redesignation to attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes that the Tennessee SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 172(c)(8) allows a state to use equivalent modeling, emission inventory, and planning procedures if such use is requested by the state and approved by EPA. Tennessee has not requested the use of equivalent techniques under section 172(c)(8).

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated

pursuant to its authority under the CAA. In light of the elimination of lead additives in gasoline, transportation conformity does not apply to the lead NAAQS. *See* 73 FR 66964.

b. The Bristol Area has a fully approved applicable SIP under section 110(k) of the CAA.

EPA has fully approved the applicable Tennessee SIP for the Bristol Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation with the exception of the Subpart 1 RACM requirements. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989-90 (6th Cir. 1998); *Wall*, 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing various SIP elements applicable for the 2008 lead NAAQS in the Bristol Area (e.g., 78 FR 36440 (June 18, 2013); and 78 FR 67307 (November 12, 2013)). In today's proposed action, EPA is proposing to approve the State's Subpart 1 RACM determination for the Area into the Tennessee SIP.

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. If EPA finalizes approval of the State's Subpart 1 RACM determination, EPA will have approved all part D requirements applicable for purposes of this redesignation pursuant to the Sixth Circuit's decision.

Criteria (3) - *The air quality improvement in the Bristol Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Tennessee has demonstrated that the observed air quality improvement in the Bristol Area is due to permanent and enforceable reductions in emissions.

When EPA designated the Bristol Area as a nonattainment for the lead NAAQS, EPA determined that operations at the Exide Facility were the primary cause of the 2008 lead NAAQS violation in the Area. The Facility installed fabric filters and wet scrubbing systems to meet federal MACT standards for lead-acid battery manufacturing facilities by July 16, 2008. In an October 30, 2014, letter to TDEC, Exide Technologies surrendered its air permits for the Facility and noted that the lead oxide and lead acid-battery production process equipment had been decommissioned and largely removed from the site. *See* Appendix F of the State's submittal. EPA considers the emissions reductions from the Exide Facility to be permanent and enforceable.

Criteria (4) - *The Tennessee portion of the Area has a fully approved maintenance plan pursuant to section 175A of the CAA.*

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. *See* CAA section 107(d)(3)(E)(iv). In conjunction with its request to redesignate the Tennessee portion of the Bristol Area to attainment for the 2008 lead NAAQS, TDEC submitted a SIP revision to provide for maintenance of the 2008 lead NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as EPA deems necessary to assure prompt correction of any future 2008 lead violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA has preliminarily determined that Tennessee's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Tennessee SIP.

b. Attainment Emissions Inventory

As noted earlier, EPA previously determined that the Bristol Area attained the 2008 lead NAAQS based on monitoring data for the 3-year period from 2009-2011. Today, EPA is proposing to determine that the Bristol Area continues to attain the 2008 lead NAAQS. In its maintenance plan, the State selected 2010 as the base year and 2012 as the attainment emission inventory year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 lead NAAQS. Tennessee began development of the attainment inventory by first generating a baseline emissions inventory for the Bristol Area. As noted above, the year 2010 was chosen as the base year for developing a comprehensive emissions inventory for lead. To evaluate maintenance through 2025, Tennessee prepared emissions projections for the years 2015 and 2025.

Descriptions of how Tennessee developed the emissions inventory are located in the Appendix D of the July 15, 2015, submittal, which can be found in the docket for this action. The Exide Facility is the only point source of lead emissions within the Area. The State calculated lead emissions from Exide Facility operations using data collected through stack tests and the application of emissions factors. Tennessee obtained the area source category inventory from EPA's 2011 NEI ver.2 database. To estimate lead emissions from area sources in the Bristol Area, Tennessee apportioned the county-level lead emissions from area sources based on population and determined that lead emissions from area sources total approximately 0.0001 tpy in the Area. The State assumed that these area source emissions remain constant throughout the maintenance period (i.e., 2010 through 2025). Tennessee determined that there are no sources of lead emissions in the Area from non-road and on-road sources based on EPA's 2008 NEI ver.2

database. Table 2, below, identifies base year emissions, attainment year emissions and projected emissions for 2010, 2012, 2015, and 2025.

c. Maintenance Demonstration

The maintenance plan associated with the redesignation request includes a maintenance demonstration that:

(i) Shows compliance with and maintenance of the 2008 lead NAAQS by providing information to support the demonstration that current and future emissions of lead remain at or below 2012 emissions levels.

(ii) Uses 2012 as the attainment year and includes future emissions inventory projections for 2015 and 2025.

(iii) Identifies an "out year" at least 10 years after the time necessary for EPA to review and approve the maintenance plan.

(iv) Provides actual (2010 and 2012) and projected emissions inventories, in tons per year (tpy), for the Bristol Area, as shown in Table 2, below.

Table 2. Actual and Projected Annual Lead Emissions (tpy) for the Bristol Area[11]

2010 Base Year	2012 Attainment Year	2015 Interim Year	2025 Maintenance Year
0.7	**0.5**	**0.02**	**0.02**

[11] For 2015 and 2025, Tennessee included fugitive emissions of 0.01 tpy and area source emissions of 0.01 tpy (a conservative approach given that the State calculated area source emissions of 0.0001 tpy).

In situations where local emissions are the primary contributor to nonattainment, such as the Bristol Area, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standards should not be exceeded in the future. Tennessee has projected emissions as described previously and determined that emissions in the Tennessee portion of the Bristol Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

While the maintenance plan projects maintenance of the 2008 lead NAAQS through 2025, EPA believes that the Bristol Area will continue to maintain the standard at least through the year 2026 because the only point source of lead emissions in the Area has permanently shut down; the design values for the Area beginning in 2008-2010 have been well below the NAAQS standard of 0.15 $\mu g/m^3$; and lead emissions from all source categories are projected to be approximately one order of magnitude below the NAAQS in 2025.

d. Monitoring Network

There are currently four monitors measuring ambient air lead concentrations in the Bristol Area. However, as noted above, only the monitor operated by TDEC meets the requirements of 40 CFR part 58. Therefore, only data from this monitor can be used to evaluate compliance with the NAAQS. TDEC has committed to continue operation of its lead monitor in the Bristol Area in compliance with 40 CFR part 58 and has thus addressed the requirement for monitoring. EPA approved Tennessee's monitoring plan on October 26, 2015.

e. Verification of Continued Attainment

Tennessee has the legal authority to enforce and implement the maintenance plan for the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions

control contingency measures determined to be necessary to correct future lead attainment problems.

Large stationary sources are required to submit an emissions inventory annually to TDEC. TDEC prepares a new periodic inventory for all lead sources every three years. This lead inventory will be prepared for future years as necessary to comply with the inventory reporting requirements established in the CFR. Emissions information will be compared to the 2010 base year and the 2025 projected maintenance year inventory to assess emission trends, as necessary, and to assure continued compliance with the lead standard. Additionally, under the Air Emissions Reporting Requirements (AERR), TDEC is required to develop a comprehensive, annual, statewide emissions inventory every three years that is due twelve to eighteen months after the completion of the inventory year. The AERR inventory years match the base year and final year of the inventory for the maintenance plan, and are within one or two years of the interim inventory years of the maintenance plan. Therefore, TDEC commits to compare the AERR inventories as they are developed with the 2010 and 2025 inventories in the maintenance plan to evaluate compliance with the 2008 lead NAAQS in this Area.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must

include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the July 15, 2015, submittal, Tennessee affirms that all programs instituted by the State and EPA will remain enforceable. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. A warning level response is triggered when a 3-month rolling average lead concentration of 0.135 $\mu g/m^3$ (i.e., 90 percent of the standard) occurs within the Area. A warning level response will consist of a study to determine whether the lead value indicates a trend toward higher lead values. The study will evaluate whether the trend, if any, is likely to continue and, if so, what control measures are necessary to reverse the trend taking into consideration ease and timing for implementation as well as economic and social considerations. Implementation of necessary controls in response to a warning level response trigger will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent calendar year.

An action level response is triggered whenever the 3-month rolling average concentration of 0.143 $\mu g/m^3$ (i.e., 95 percent of the standard) or greater occurs within the Area. A violation of the standard (any 3-month rolling average over a 36-month rolling average period (3-calendar years plus the preceding 2 months) exceeds 0.15 $\mu g/m^3$) shall also prompt an action level response. In the event that the action level is triggered and is not found to be due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, TDEC in conjunction with the entity(ies) believed to be responsible for the exceedance will

evaluate additional control measures needed to assure future attainment of the 2008 lead NAAQS. Measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the calendar year that prompted the action level. TDEC will also consider the action level trigger and determine if additional, significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner.

At least one of the following contingency measures will be adopted and implemented upon a triggering event:

- Improvements in applicable permitted control devices;
- Addition of secondary control devices or improvements in housekeeping and maintenance; and
- Other measures based on the cause of the elevated lead concentrations.

Any contingency measure implemented for an operating permitted source will require a compliance plan and expeditious compliance from the entity(ies) involved.

Based on the shutdown of the Exide Facility and the surrender of its operating permit, TDEC believes that the 2008 lead NAAQS can be achieved on a consistent basis in the Area. Because the Exide Facility has shut down, any possible exceedances of the lead NAAQS during any three month period after December 31, 2015 (the attainment date), are likely to be a result of fugitive emissions. The contingency measures discussed below will immediately take effect to offset any increase in air quality concentrations that are expected to result from emission increases due to the likelihood of fugitive soil dust disturbance and/or entrainment from the Exide Facility.

In the event of an exceedance, Exide will be required to conduct a twelve minute EPA Method 9 visible emissions reading on each lead source outlet by a certified reader every day, as well as a dye check on every filtration system that was controlling a lead source. These control measures will help to determine and detect the source of fugitive emissions so that the exceedances can be addressed immediately. Other contingency measures include restricting traffic to and from the facility and the daily application of wet suppression using a sprinkler frequency of 5 minutes every 30 minutes during daylight hours and 5 minutes every 60 minutes during nighttime hours twenty-four hours a day everyday which will serve to reduce fugitive dust emissions. Each of the contingency measures will continue for at least 90 days and remain in place until such time as TDEC has determined that they are no longer needed. In addition to the identified contingency measures, if an exceedance of the NAAQS occurs during any three month period after December 31, 2015 (the attainment date), within 120 days, the facility will submit an investigative study identifying the source(s) contributing to the exceedance. Exide will also develop and prepare a strategy to eliminate the likelihood of another exceedance. The 120-day review period will consist of a 30-day evaluation period immediately following a violation and then up to 90-day consultation period with the facility to determine the best course of action.

EPA has preliminarily concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, EPA proposes to determine that the maintenance plan for the Area meets the requirements of section 175A of the CAA and proposes to incorporate the maintenance plan into the Tennessee SIP.

VI. Proposed Actions.

EPA is taking four separate but related actions regarding the redesignation request and associated SIP revision for the Bristol Area.

First, EPA is proposing to determine that the State's Subpart 1 RACM determination for the Area meets the requirements of CAA section 172(c)(1) and to incorporate this RACM determination into the SIP.

Second, EPA is proposing to determine, based upon review of quality-assured and certified ambient monitoring data for the 2012-2014 period and upon review of preliminary data in AQS for 2015, that the Area continues to attain the 2008 lead NAAQS following EPA's determination of attainment.

Third, EPA proposing to approve the maintenance plan for the Area and to incorporate it into the SIP. As described above, the maintenance plan demonstrates that the Area will continue to maintain the 2008 lead NAAQS through 2026.

Fourth, EPA is proposing to approve Tennessee's request for redesignation of the Area from nonattainment to attainment for the 2008 lead NAAQS contingent upon final action approving the State's Subpart 1 RACM determination into the SIP. If finalized, approval of the redesignation request for the Bristol Area would change the official designation the portion of Sullivan County bounded by a 1.25 kilometer radius surrounding the UTM coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Facility, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 lead NAAQS.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by State law. For that reason, these proposed actions:

- are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq*.

Dated: April 14, 2016.

Heather McTeer Toney

Regional Administrator,

Region 4.

[FR Doc. 2016-09600 Filed: 4/25/2016 8:45 am; Publication Date: 4/26/2016]